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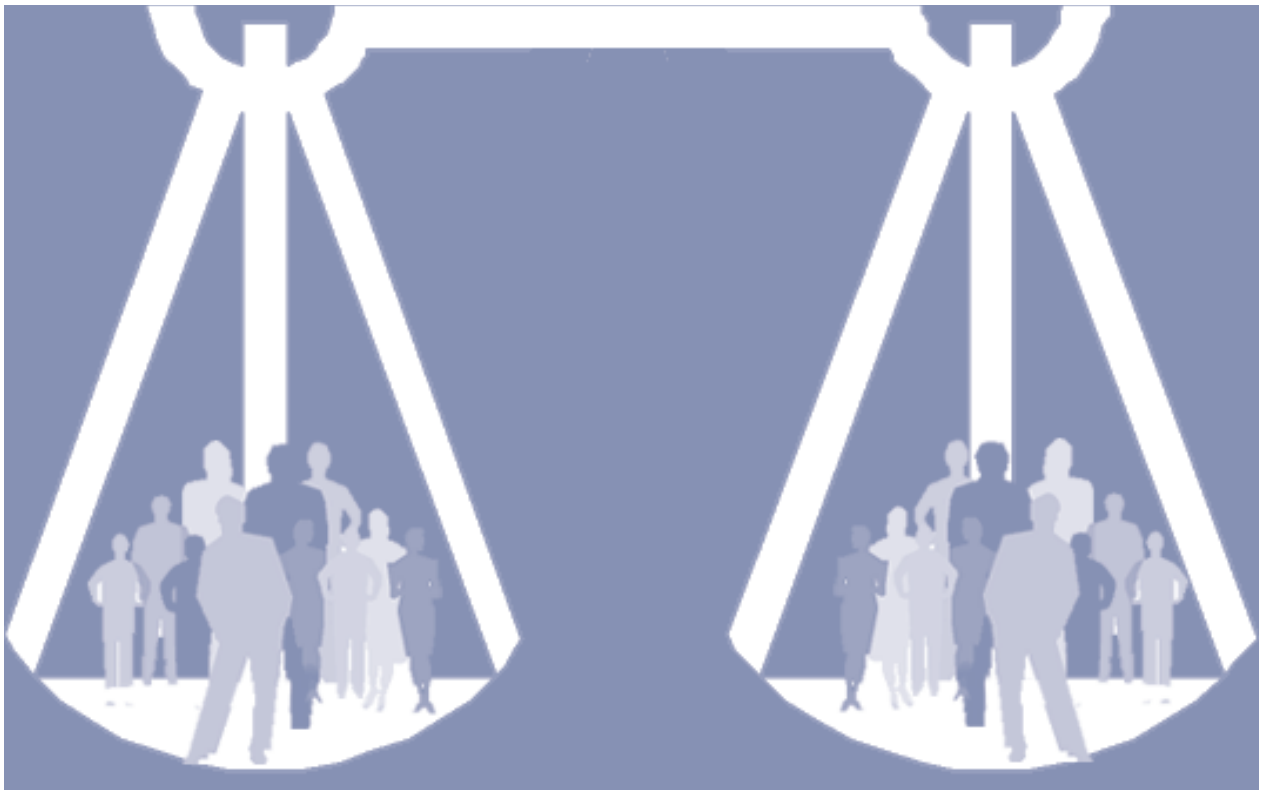
Toolbox For Implementing Restorative Justice and Advancing Community Policing

A guidebook prepared for the Office of Community Oriented Policing Services, U.S. Department of Justice



By Caroline G. Nicholl

TOOLBOX FOR IMPLEMENTING RESTORATIVE JUSTICE AND ADVANCING COMMUNITY POLICING

A guidebook prepared for the Office of Community Oriented Policing Services,
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Note

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Introduction to Toolbox

Introduction to Toolbox

Putting Restorative Justice into Action[1]

> Not too much has been written or said about police officers using their discretion to choose not to initiate criminal proceedings. It is done frequently . . . but when it comes to 'going formal,' our training and imagination for the most part starts and stops with the laying of criminal charges and going to court. We are seemingly locked into the court syndrome.
>
> — Cleve Cooper, Commander
> Royal Canadian Mounted Police

The overall aim is to introduce an effective program that restores victims and offenders to the community by repairing the harm and preventing further harm.

Restorative justice offers the hope of transforming the way the crime problem is addressed by encompassing community problem solving and citizen engagement. It affords citizens and communities opportunities to understand their role in controlling and reducing the incidence of crime. In addition, restorative justice is a means of promoting a healthy balance between formal and informal measures to address the causes and consequences of crime.

This *toolbox* aims to provide a practical guide to police departments interested in starting a new restorative justice program. It is not a definitive account of everything that restorative justice has to offer. Nor is it a training manual for facilitators of restorative justice processes. Facilitation requires specialized training and the supervision of those taking on this role. Starting up a program requires more than a few trained staff members. However, many issues need attention before a program can go *live*.

Remember that restorative justice is a new approach without a standard blueprint. Your program can benefit from what has been learned so far, but your program will be unique and will evolve over time. Across the world, as restorative justice continues to spread, new lessons are being learned all the time.

Our understanding of what is restorative to victims, offenders, and communities is still at an early stage of development. We are only beginning to explore the real capacity of lay communities to participate in justice decision making through problem-solving solutions to crime. How to meet the needs of victims, and how to make offenders accountable without emphasizing punishment, are subjects that also require much more experiment and testing.

Restorative justice offers many rewards, but a couple of warnings need to be heeded. Be mindful that gaining acceptance of restorative justice in a retributive climate is likely to be thwarted unless the values and principles are understood and properly applied. It is easy for practitioners to rush into experimenting without having considered all of the principal elements that make up the necessary framework of restorative justice practice. Appropriate translation of the key values into a program requires considering a series of questions and issues that are relevant to the implementation and operation of restorative justice processes.

A poorly planned program may merely tinker with or replicate the traditional criminal justice system; this danger exists when the program is developed by practitioners accustomed to the rules and procedures of the courts who are not yet conversant with the new paradigm.

So be aware that in trying to introduce your program, there will be obstacles simply because restorative justice is so different from the traditional system.

Nevertheless, the dangers are offset by opportunities for learning—for finding out how we can meet the challenges of crime, victimization, and offending behavior in ways that promote a healthy, inclusive society. This is a goal for which all police officers can happily work.

All the good initiatives in restorative justice have evolved over time, in response to specific priorities, and have been custom-made for local circumstances.

No single implementation plan and no one model of restorative justice is right. In the development of community policing, the police are learning the importance of applying principles in ways that are sensitive to local issues. Restorative justice requires the same flexible approach, without losing sight of the values and ethos inherent in this new vision of justice. As with community policing, restorative justice demands thoughtful and careful planning that considers both the needs of today and the needs of the long term; there is no quick fix for either. Restorative justice has clear aims, but how you go about achieving them is critical to the success of your program. The processes of implementation are just as important as the goals and objectives.

This toolbox has been designed to help people avoid the dangers and avail themselves of the opportunities. The sections of the toolbox outline the basic ingredients needed to design and implement restorative justice, leaving plenty of leeway for creativity and local adaptation. The sections do not specifically distinguish between the three models outlined in the accompanying monograph: victim-offender mediation, family group conferencing, and circles. While these models represent the bulk of experiments to date, they are by no means the only ways to put restorative justice into practice. Do not be put off by all the ingredients you need to have. Developing restorative justice is something you should not try to do on your own. Get others on board to help you!

In restorative justice, the basic ingredients are essential, but there is room to improvise.

The basic ingredients of restorative justice (and Parts 1–7 of this toolbox) are:

1. Values of restorative justice
2. Addressing victims' needs
3. Holding offenders to account
4. Building community capacity
5. Developing a program
6. Benchmarks for evaluation
7. Unresolved issues

There may be no such thing as the perfect system but the restorative philosophy offers a way of bringing justice to the ideal.[2]

Restorative justice requires more than tinkering with existing practices and systems. It should bring transformations in thinking and understanding about crime, communities, and the role of policing. The aim of this toolbox is to bring justice closer to the ideal.

Part 1

Toolbox For Implementing Restorative Justice and Advancing Community Policing

Part 1. Values of Restorative Justice

Part 1. Values of Restorative Justice

Introduction

Several basic values and principles need to be understood in the evolution toward a restorative justice response to crime. Talking and working through their meaning will help your department plan, design, and shape programs, processes, and working practices. Many police departments already have mission statements and objectives that reflect central elements of restorative justice. Community-oriented policing, problem solving, victim services, youth mentoring and education, diversionary schemes, and child abuse investigation teams, for example, reflect many of the features of restorative justice: concern for community problems, recognition of victim needs, communication with a large variety of people, opportunities for offenders to be reintegrated into society, and a focus on promoting safety and order in the community. As you know already, shaping how these initiatives develop depends largely on having clear goals and basic principles that guide practitioners.

The following pointers will help police departments to review existing approaches and to think about developing new ones, particularly in relation to their handling of reported crime. Restorative justice views crime as harm done to people—victims, offenders, and communities. If crime is essentially about harm, accountability is about learning to understand that harm and attempting to repair it—and this requires engaging the primary parties, who are given key roles in restorative justice processes.

Dealing constructively with crime requires the participation of those people with a stake in the offense to work out what should be done, giving equal attention to the needs and interests of victims, offenders, and the community. Restorative justice promotes an inclusiveness approach to the problem and to harm identification and repair. No one person is seen as having all the necessary information, nor all the answers.

Dialogue and Inclusiveness

Restorative justice builds on many features of community policing—including working in partnership and problem solving.

How can this be accomplished? You need these:

- ***Bring parties together.*** Instead of keeping the parties involved in crime separated, think about how people can be brought together in a safe environment to talk about the impact of a crime and about its consequences for both the victim and the offender. *Engage affected parties in a process that encourages collaboration and problem solving.*

- ***Safe environment***. A safe environment means thinking about the right timing for such a meeting, preparing the participants who have been identified as having a stake, being clear about the purpose of the meeting, and ensuring that everyone is invited in a voluntary capacity. The location of the meeting should be a neutral place. *Bring people together in an environment that feels safe* and at an appropriate time. Sometimes this might be a few days after a crime. In other cases, it might be months later.

"The symposium gave me firsthand experience of the collaboration necessary for restorative justice to work."

— feedback from a regional conference on restorative justice run by the U.S. Department of Justice, 1997

- ***Focus on harms.*** The focus of the meeting is on identifying the harms and:
  - Restoring the victim(s)—emotionally, materially, and relationally.
  - Encouraging the offender(s) to take active responsibility to repair the harm.
  - Identifying resources in the community to support both the victim and offender.
  - Taking steps to prevent further crime.

- ***Several steps.*** The process involves several steps. Typically such dialogues take about an hour and a half, including introductions and allowing all parties to express how they feel, to ask questions of each other about what they would like to do to address identified needs, and to work out agreed outcomes. *The emphasis is on listening, learning from one another, and working out what would best serve everyone's interests. Focus on identifying and addressing people's interests and need*s.

- ***Skilled facilitator.*** The meeting requires a skilled facilitator who explains the process and the ground rules, provides the parties an opportunity to speak openly about the crime and its full impact, to receive answers to questions they might have, and to follow up on insights as to how best the harm can be repaired. *The dialogue should be facilitated to enable parties to keep this focus.*

- ***Respectful dialogue***. The meeting should be conducted with a respectful dialogue about the crime and with the purpose of promoting cooperative problem solving by the participants, including the offender. It should not be an adversarial process, even though people who attend my feel like adversaries. *Show respect for all parties who attend at all times.*

Be ready for these:

- ***Powerful communication.*** Communication in restorative justice processes is often experienced as being "powerful, difficult, frightening, devastating, exhilarating, euphoric."[3] Do not underestimate the power of the dialogue, which allows people to show their emotions as well as to exchange facts. *The process is a dynamic one, empowering all affected parties to respond to crime.*

- ***Breaking down stereotypes.*** The communication helps to shift people's focus because the dialogue is meaningful to those present; this in itself begins to repair the harm done by the crime. The process breaks down stereotypes about victims, images of monster offenders, and assumptions about apathetic and uncaring communities. People are encouraged to see that others too have strengths and weaknesses—and are human. *The process is humanizing and promotes understanding.*

- ***Obstacles.*** The meeting may not replace the traditional criminal justice system if, for example, the offender is uncooperative or the victim does not volunteer to

participate (see "When Is Restorative Justice Appropriate?" in box). Recourse to the formal, adversarial system takes place when the dialogue fails. *Punishment may be an appropriate solution to address public safety and protection needs, but victim restoration can still take place.*

When Is Restorative Justice Appropriate?

Restorative justice is suitable for any offense, including cases where no offender is caught and so-called *victimless crimes* (e.g., drug dealing). Selection of cases, however, should be based on the value of the intervention to the parties concerned and to the wider community, as well as on the wishes of those involved. All restorative justice processes should be conducted on a *voluntary basis*, and some cases call for specific procedures that are highly sensitive to those involved, as in crimes involving serious violence.

It is advisable, therefore, to *choose restorative justice when there is support* for this kind of intervention, when there are *trained facilitators* equipped to run the dialogue, and when there are *opportunities for victim restoration, offender reintegration, and mobilizing community resources.*

- The dialogue affords a good opportunity for handling the impact of a crime that has already happened as well as for promoting crime prevention. Those present learn that crime does not happen in a vacuum: offenders are not born, they are created. *The avenues for prevention become clearer after such an open forum*.

As the key values of restorative justice are presented in this section, think through carefully what they mean for your program.

Crime: More than a Violation of Law

While laws invoke standards, restorative justice necessitates an understanding of the *particular consequences* following a crime. The idea is that you cannot repair harm unless you know what harm has been done. (See "Value of a Focus on Harms," in box.)

Value of a Focus on Harms

A focus on harms will change the way you respond to crime and how those involved in the dialogue think about crime. This is important to deal with crime effectively as well as prevent future crime. Thus, restorative justice is a response to crime that includes prevention. Helping victims recover, reintegrating offenders into the community, and promoting care in the community will enhance public safety. Crime is no longer seen as an unresolved issue, and people learn from the dialogue. This learning promotes positive change.

While traditional systems of crime control have focused on the investigation of facts to identify evidence for a prosecution, restorative justice initiates an exploration of all those who might

have been affected by a crime in any way. A property crime, for example, may provoke deep emotions for some people, making the crime harmful beyond material terms. Do not just think about the primary victim(s). There will be others who suffer consequences, including, for example, the offender's family and the victim's friends and colleagues. Bring together those people who can determine what harm has been done and how the harm can be addressed.

The theft of a piece of jewelry or a car, for example, is seldom only a matter of property loss. How the crime was conducted, on whom, by whom, and where, can have significant consequences not only for the victim, but for the offender and community as well. A standard response will inevitably be inappropriate. Only by exploring the facts and the feelings provoked by a crime can there be a full understanding of the impact that needs to be addressed in a response to crime.

VALUE: Crime is a violation of the law, but this is too abstract; restorative justice recognizes that each crime creates its own unique consequences for those affected and harms people materially, mentally, individually, and socially. The response to crime includes identifying the harm and finding out what can be repaired.

Repairing Harms

Many victims of crime who go to court do not feel that their needs have been taken care of, even if they see their offender(s) convicted and sentenced. Some people call this the need for *healing*, which requires that all the injuries and harm are addressed. The traditional system forces us to think inside the box and shapes how we view the impact of crime. Restorative justice asks us to redefine crime beyond a breach of the law:

- ***Have a broad outlook***. Harms come in many guises and require a broad outlook on how crime can and does affect people. The harms are dealt with through a mixture of:
  - Letting victims speak for themselves on how they have been harmed.
  - Distinguishing between the offender and his or her behavior: condemning the behavior, but not the offender.
  - Dialogue in which care and empathy prevail over anger and vengeance.
  - Recognizing that while the offender has obligations to repair the harm, these should not be harmful to him or her.
- ***Alleviate suffering***. Some harms are not reparable, but restorative justice challenges us to be imaginative about what might alleviate a person's suffering. Even parents of a murdered child can experience some relief if attention is paid to the different feelings of despair that they have. They might feel guilty about not having done more to protect their child, or feel regret that their last conversation was too casual or involved a quarrel. Acknowledging these harms is important.

  Example: The mother of two homicide victims attended court when the killers were given life sentences. She addressed the men in court: "The only thing that has kept me going without my boys is my hope and faith that one day I would see

you stand before God just before you burn in hell. And on that day you will tell me why you killed my sons." A very natural response from a victim who is suffering deep pain. Notice however, the question she has—even after a court trial. "Tell me . . ." suggests that she has many unanswered questions as to why her sons were killed. The victim may benefit from a restorative justice process at some stage—when she is ready and if she is willing—to get answers that she will be struggling to understand for the rest of her life.

VALUE: Victims of crime must be respected for what they might be going through, and this includes not assuming we know how they feel. Restorative justice processes need to involve the victim so that his or her needs and interests can be determined.

- ***Be sensitive to every harm***. Even offenders experience harm. They might feel defensive or feel deep shame. It is not unusual, for example, for *lifers* to be emotional about their crimes many years after the event. *Offenders can feel isolated and scared*. (See "Harms Typically Experienced by Victims, Offenders, and/or Communities," in box.)

- ***Be aware of community harms.*** A community also experiences harm and might change the way it behaves or relates. Fear might stop people from doing certain things or speaking to others. Anger might create tensions that never get resolved, with community members harboring distrust, suspicion, and resentment. Left to fester, these harms are counterproductive to social arrangements whereby people care for each other and are committed to harmony. *Consider what impact the crime has had on the community when convening a dialogue*.

- ***Enable victims to tell their story.*** The importance of victims being able to tell their story cannot be overemphasized. This experience satisfies part of their need to be listened to, to be vindicated, to be supported, and to move toward healing. *Victims should not be patronized but dealt with as key players in determining what should be included in the response to a crime.* The physical and emotional protection of the victim should be paramount considerations.

  Example: An elderly woman who is the victim of a burglary might not be concerned with the property loss so much as the sentiments and feelings bound up in the stolen property—say, if the property used to belong to her recently departed husband. A monetary compensation for the property thus might not be what she needs. An acknowledgment by the offender that he has taken something precious from her, however, might be an important symbolic gesture that helps her to heal.

- ***Acts of repair must be relevant to victims***. There will inevitably be direct victims—those against whom the crime was committed—as well as secondary victims, including families, neighbors, employers, friends, and the wider community. *Those who have suffered specific harm(s) should be encouraged to speak about their victimization so that no one assumes on his own what is needed.* Acts to repair the harm need to be relevant to the people who have been harmed.

Harms Typically Experienced by Victims, Offenders, and/or Communities

Loss of trust	Physical injury, pain	Sense of aloneness/ isolation
Loss of a sense of safety/security	Feeling numb, disconnected	Remorse/ sorrow
Feeling angry/humilated	Loss of control	Shame, guilt
Emotional trauma (that might continue for years)	Fear and anxiety, defen-siveness, prone to attack	Post-traumatic stress disorder
Property damage or loss	Loss of dignity and/or respect	Sense of powerlessness
Betrayal, feeling of being abused	Loss of sleep or job, disrupted relationship	Inconvenience, court attendance, hospital/ insurance bills
Depression	Feeling of vengeance, hostility	Difficulty relating to people
Feeling of weakness	Death, loss of limb or senses	Memory losses, difficulty concentrating

VALUE: Offenders have obligations but are also seen as needing support—and respect. Their crimes are construed as being caused by circumstances or problems that need to be addressed. Their behavior is not excused, but an explanation is sought as to why they caused harm to others (and often to themselves).

- ***Acts of repair should be meaningful and proportional***. The decisions about harm repair need to be fair, realistic, and closely related to the damage that has been done. The values of restorative justice require that the obligations to repair the harm should be meaningful to the parties involved, rather than imposed according to standard guidelines. Sentencing guidelines or minimum mandatory sanctions do not have a place under restorative justice. Obligations should be proportional, however, to the harms identified.

  Example: A teenager was shot by a neighbor with an air rifle and required hospital treatment costing thousands of dollars. His mother was not so much worried about the money, however, as about confiscating the air rifle so that "my son can freely play in the yard without fear." A process under restorative justice values is more likely to ensure that the neighbor agrees to surrender possession of a gun than is any court order under the traditional criminal justice system.

- ***Distinguish the offense from the offender***. A pragmatic response to offending behavior is sought: the offender has done wrong (and harmed himself and others) but he or she ought not to be condemned as a person. Rather, the offender should be invited to take part in identifying the harm and how it can be repaired. The offender is seen as a valuable member of the community who has

to be held accountable for the wrongdoing without being isolated from those who might help to keep him away from further trouble.

- ***Think "outside the box."*** Restorative justice demands that we think outside the box and learn what the real capacity for changing behavior is when care, respect, and support win over anger, fear, and hatred. (See "Educative Value of Restorative Justice," in box.)

Educative Power of Restorative Justice

Approaching offending behavior through a restorative justice lens affords much more opportunity for reflection, introspection, and learning about what crime means, how it can be prevented, and how important social controls can be. This is true for the offender as well for others who participate in the dialogue. Restorative justice processes are educative processes, teaching us in ways that break down myths, assumptions, and stereotypes—building instead confidence, willingness to try new things, and learning from one another.

VALUE: The offender is not isolated or banished from the community unless this is necessary. The community can exercise monitoring and supervision as well as provide support and encourage the offender's restorative experience.

- ***Accountability should be meaningful to the offender***. Restorative justice processes expose the offender to the harm done by his behavior; this exposure is critical to gaining the offender's understanding of the link between actions and consequences and is a precursor to the development of empathy and willingness to change. The accountability for crime is thus more meaningful than simple punishment; and major life changes for offenders are not unknown. These might include addressing a drug or alcohol problem through treatment and counseling, learning skills for controlling anger or destructive behavior, finding employment, learning the impact of crime on victims and communities, or making a commitment to a plan that involves helping other people keep out of trouble. *Obligations may be difficult for the offender, but they should be achievable.*

- ***Enable offenders to feel connected to others.*** Addressing the offender's needs and obligations—with support from the community—is likely to enable the offender to see that he is someone connected to people who care about him. The result is that offenders are more likely to feel genuine remorse for their crime toward the victim and community. It is often hard for offenders to apologize, but restorative justice processes are intensely powerful catalysts for changing hearts and minds. *Remorse or apologies should not be expected as a matter of course, but are more likely to come from offenders who have been shown care.*

Involving and Strengthening the Community

The traditional criminal justice system applies power and force to control offenders. Restorative justice suggests that much can be done by way of cooperative arrangements between the com-

munity, the victim, and the offender (with the state's help) to see crime in a social context—and the need for informal social controls. *Restorative justice helps people learn from each other and promotes mutual respect.*

VALUE: Restorative justice encourages a dialogue between victims, offenders, and communities to resolve crime in a way that leaves everyone in a better place. The focus is on making things right instead of being resigned to what has gone wrong.

Communities experience crime as victims—they can be weakened by the impact of crime, including fear. Communities also bear the responsibility, however, of supporting the victim(s) and the offender(s), and they can be strengthened by this process:

- The community can play a vital role in determining how the offender should be held to account, as well as in helping the offender adhere to an agreed plan that addresses the victim's needs and the offender's own behavior. Social interventions are often necessary to stop further offending. This might involve punitive sanctions, but the focus is on enabling the offender to understand what is due to others from past behavior, as well as what he owes to reduce the likelihood of further offending. The community can help the offender develop a sense of obligation and a willingness to change. It is unlikely that this will come by itself from the sole effort of the offender. *Offenders should be supported by the community while being encouraged to take responsibility for their behavior.*

- The community can help the offender identify his or her positive strengths and work on building on these to change behavior. In this way the offender is encouraged to accept active responsibility for making good the harm without being banished from the community. Offenders who make amends with the support of the community are reintegrated into the community, which helps to prevent further crime. *Encourage collaboration and reintegration rather than isolating offenders.*

VALUE: Restorative justice promotes the peaceful resolution of crime by focusing on recovery and develops a spirit of cooperation and respect, seeking creative solutions for harmony.

- As harms and needs are identified through the dialogue involving the parties, the community, and justice agencies, it becomes clear that many of these require community resources. Communities can provide help and support to victims, instead of leaving them to feel alone and isolated. Communities can share information about the offender, which can lead to understanding which social issues need to be addressed by them, or with their support. *Communities can use their resources to promote repair of harms and prevent further harm.*

- Indirectly, these efforts become a learning process. Communities are likely to feel more committed to addressing the underlying causes of crime when exposed to a dialogue that reveals the links between cause and effect. *The community is thereby strengthened and less likely to be feeling powerless in the face of crime.*

- Restorative justice is about strengthening individuals and communities rather than about perpetuating weakness and failure. Victims are afforded opportunities to regain their sense of safety and trust. Offenders are given opportunities for learning the consequences of their behavior and making changes to avoid further criminal activity. Communities are given the opportunity to express care and concern for their members and to learn from one another what promotes safety and

freedom from crime. *Those who participate in restorative justice processes learn of the interdependency of people: that there is a need for sharing responsibility and caring for one another.*

- The shift from focusing on how to punish offenders to identifying how the consequences of their behavior has created harm is highly instrumental in encouraging an open dialogue among parties affected by crime. Instead of a "blame and nail 'em" attitude, the objective is to help recovery and to decide what measures would be most conducive to preventing crime from happening again. Defining the harm increases awareness of needs and obligations that have arisen, rather than allowing ungrounded assumptions to determine sanctions. The dialogue provides insights as to how the crime has affected people and not just which laws have been broken. Victim empathy and offender responsibility develop as understanding about what has happened unfolds. Further harm is avoided. *The dialogue can be intense—at times, hostile and upsetting—but remarkably there usually is a sense of wanting to work toward a plan that is in everybody's favor.*

- Society is not in a position to hand over the handling of crime to communities. Nor should we pretend that the formal, adversarial system is a sufficient response to the problem of crime. The state's role is to seek a balance between the capacity of communities to respond to crime and its own ability to deliver public safety. Communities cannot decide culpability, and offenders can choose to be uncooperative. Some crimes have such broad impact that no single community could determine harm or the restoration required. Some victims do not wish to participate in restorative justice processes. *The state will always have a role, but the role needs to be shared.*

- The state needs to recognize that crime violates people and has repercussions for individuals and communities. Participatory problem solving is often better for reaching agreed outcomes than an adversarial contest conducted by professionals where one side wins, and another loses. Punishment is not always more important than reparation and reconciliation. *Engaging communities, rather than sidelining them, can promote informal social controls, an essential contribution to crime reduction and public safety.*

Restorative justice involves the transfer of power and decision making authority (principally that of the court) from the state to the community and engages victims and offenders as key participants.

VALUE: The state has a role but its role is to support communities—to develop their capacity for resolving crime. The state's role is to safeguard citizens from community prejudices and abuse of authority, and to deal with crimes in which the offenders deny responsibility.

Summary

Part 1 has covered the basic values of restorative justice that you need to think about. Other sections of this toolbox go into more depth about the way you should approach victims, offenders, and communities in designing your program—and the role of the state.
You need to:

- Involve all parties affected.
- Provide a safe environment.
- Focus on harms.
- Use a skilled facilitator.
- Promote respectful dialogue.

With special attention to:

- Particular consequences.
- Community resources.
- Giving victims a key role.

To foster dialogue that:

- Addresses needs of victims.
- Breaks down stereotypes.
- Encourages the offender to take responsibility.
- Distinguishes offender from offense.
- Builds on the offender's positive qualities.
- Prevents harms from growing.
- Finds causes of crime.
- Locates areas for social intervention.

Part 2

Toolbox For Implementing Restorative Justice and Advancing Community Policing

Part 2. Addressing Victims' Needs

Part 2. Addressing Victims' Needs

Introduction

Victims experience an immediate disruption of their lives following crime, and may experience long-term trauma. The impact of crime on individual victims, as well as on communities and society at large, is not widely understood. The traditional criminal justice system has made efforts to listen to victims (through victim impact statements and panels, for example, and court-based victim services, which provide support to crime victims as well as provide valuable information in the court).

Although the traditional system has become more in touch with the needs of crime victims, it still regards any crime as *its case*. Victims are often perceived to be confused, unreliable, over-emotional, and incapable of making decisions. However, *victims should be given every opportunity to tell their story without the constraints often imposed by the rules of evidence and due process of law.*

Impact of Crime on Victims

Restorative justice processes need to be *victim-centered*, *victim-sensitive*, and *victim-empowering*. Restorative justice helps us to understand much more about victim trauma and to recognize the shortcomings of traditional attitudes toward victims. Restorative justice processes promote interventions that assist victim recovery. Crime is a sudden, unpredictable event for most victims and can provoke an emotional rollercoaster.

Ironically, as is the case with offenders, many victims face stereotyping and stigmatization. They can be isolated (often because their victimization increases other people's sense of vulnerability) and may be seen as being in some way responsible for what has happened to them. The isolation and blaming of victims can compound the harm that they already are suffering following the crime.

Victims can feel disoriented after a crime event has disrupted their life. They often endure conflict between a willingness to share what has happened to them and a desire to forget—or to deny—that the crime occurred at all. The denial can be powerful but is counterproductive for recovery and healing. Any denial or understatement of what has happened to the victims by others is also damaging. Remembering what happened and telling people about the crime are prerequisites for victim restoration.

Telling their story does not come easily to victims; they experience sudden changes of which they themselves might not be aware, or of which they cannot speak. They can be very emotional and thus thinking in a disorganized fashion. Recent research has revealed that serious crime victimization can have a physical impact on the brain, making memory retrieval more difficult. In some cases, the effects of crime on a victim can change the victim's entire life. Trying to rebuild one's life takes time and may require therapy or clinical treatment over the span of several years.

Victims suffer grief, for example, from the loss of a loved one, loss of trust, loss of property, or loss of feelings of safety. *Crime can provoke shock, rage, despair, detachment, depression, and fatigue.*[4] *Remember that victims can experience these even when the offender is not caught.* Think about what can be done for victims in these cases as well.

What Victims Need

"Victims of violent crime have 'holes in their hearts' that no amount of support, therapy, theology, self-talk and behavior modification seems to be able to fill. They need answers to their questions which only the offender can provide; they need the opportunity to express the full impact that their crime has had on their lives and the lives of others; they want to hear the offenders admit guilt, take responsibility, and be accountable beyond themselves to the victims and their community."[5]

"We are working toward restorative justice when we work toward the restoration of victims, empowering them and responding to their needs as they see them."[6]

The suffering that victims experience can last for days, weeks, or even years. In some cases, the crisis will have an impact on those around the victim. For this reason, *the response to victimization is critical.* (Some maintain there is a need for medical attention as a matter of course, in addition to interventions relevant to justice; in Argentina, for example, in all cases of violence, a victim will be seen by a doctor as well as a lawyer or police officer.)

Restoring Victims

Restorative justice processes need to reflect the elements listed in "Key Stages in Victim Recovery" (in box) as much as possible and to give victims choices, time, information, the opportunity to be heard, support, a chance to hear and to understand why the crime happened to them, and influence over what action needs to be taken. *Above all, restorative justice processes must afford victims respect and ensure that provision is made to avoid further harm.*

Key Stages in Victim Recovery

- Establishing safety
- Reconstructing the crime—ventilation
- Acknowledgment from others—validation
- Supporting the victim: words of empathy or "I'm sorry"
- Providing information
- Maintaining good communication
- Reconnecting with people
- Help in reconstructing life to make sense of what happened after a crime
- Giving victims a role in making decisions for the justice process

Goal: *To lessen the immediate and long-term effects experienced by victims and to prevent future harm.*

The true involvement of victims as a key player will come only from building opportunities for victims of crime to be engaged fully in the planning, design, implementation, and operation of restorative justice programs. Think about involving crime victims as soon as you consider restorative justice for your department.

How Can This Be Accomplished?

- ***Involve victims of crime and/or victim support services in the planning of your program.*** It is important that victims be given opportunities to learn about restorative justice and about how it might help them. Their input will be invaluable, even if they have reservations about restorative justice. Experience to date suggests that crime victims can recognize that restorative justice offers benefits, but problems can arise in the course of its implementation. *These problems can be avoided if crime victims are at the table from the start.*

- ***Victims of crime should be invited to participate in restorative justice processes without coercion or the expectation that they must come.*** In theory, no crime is unsuitable for restorative justice intervention, but restorative justice is not suitable for all victims. Victims need to feel safe and should not be pushed into doing something that feels threatening. Give victims information on which to make decisions. *Good preparation before a restorative justice intervention can prove helpful in securing the voluntary attendance of crime victims.* In some cases, a telephone call might suffice. In most cases, however, only a personal visit by the facilitator can build trust and an understanding of what to expect from participation. In some cases, any meeting with their offender might not be appropriate for years after the crime.

- ***It is important to distinguish between affording victims of crime a choice to participate as active partners—***and allowing them to attend merely to help the process achieve outcomes unrelated to their restoration**.** *Using victims as props to make decisions about an offender is not only damaging and disrespectful to the victims, but will ultimately dissuade them from participating in restorative justice.*

- ***Victims of crime are willing to participate in restorative justice processes more often than is generally recognized***, but one must ensure that they feel fully involved in all stages of the process and are included in decision making, such as timing, location, identifying who else should be invited to participate, seating, and agreed plans for the offender and the community.

Focusing on material outcomes for the victim might seem appropriate, but this ignores the importance of the emotional needs left in the wake of crime.

International Focus on Victims

In November 1989, the General Assembly of the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. It recommends measures to be taken on behalf of crime victims and has helped direct attention to the needs to victims internationally. A manual for enhancing victims' access to justice, fair treatment, restitution, and assistance is presently in circulation.

- ***Some victims (e.g., the young, the elderly, the ill) may require dedicated support*** if they are to participate in restorative justice. In certain cases, a parent or other guardian will suffice, but the victim might also enjoy a trusting relationship with a teacher, counselor, nurse, or someone else. *Ask the victim who should be invited to be with him or her at a preparatory meeting or any dialogue with the offender.*

- ***Victims of crime may feel anger toward their offender, and they need to know that it is legitimate for them to share their feelings.*** Letting victims vent their feelings helps to normalize what they are experiencing. Victims should be well prepared, however; they should be helped to understand that the restorative justice intervention seeks to create a safe environment for everyone, including the offender, to promote a dialogue that focuses on restoration. *Certain ground rules must be established, including the prohibition of any violence, threat of violence, and abusive language.*

- ***Understanding the impact and consequences of a crime on victims requires a different kind of dialogue than that allowed in the courts***. Restorative justice does not seek to prove a case against the offender. It focuses on recovery from harm and reintegration. Ask victims how they feel, whether they feel safe (and if not, where they would feel safe), and *acknowledge their victimization*, for example, "I am sorry this has happened. It's not your fault. You're not going crazy."

- ***Victims of crime should not have their expectations raised unrealistically. It is important to be honest about what restorative justice may or may not achieve***. In some cases, a single restorative justice intervention will not address any of the victim's needs. It might take several meetings over a period of months before the victim experiences any benefit. For example, some offenders will not exhibit remorse or fulfill the agreement to repair the harm. *These failures can further erode the victim's sense of trust of other people and can compound the victim's suffering.*

- ***It is important to be sensitive in your use of language:*** some victims do not like to perceive themselves as *victims*, believing that the label connotes some kind of failure. One should also recognize that words like *recovery, healing, reconciliation*, and *forgiveness* can provoke resentment. *A facilitator*

needs to be aware of the comfort zone of a victim and of cultural differences that can play a significant role. Alternative words less likely to evince a hostile reaction include *survivor, making right the harm (or wrong), support, assistance, holding the offender to account;* or use the person's name (this is often the safest) and define the harm or feeling as he or she would express it: e.g., "the loss of your gold watch," "the kidnapping of your daughter Mary," or "the fear that you have."

- ***Restorative justice processes are highly personal to those involved and entail people telling their story—as they see it***. The dialogue should be open, nonadversarial, and allow the expression of fear, anxiety, pain, and hopes. *Restorative justice should provide opportunities for the victim to gain a better understanding and personalization of the crime's impact, to allow for recovery.*

- ***No one can fully understand the victim's feelings or experience. Thus, one must allow victims to speak from the heart and let them know that we are listening*** with the heart as well. They have things to say that we might not understand; they often need answers to irresolvable questions; and they have expectations that might not be met. We have to assume that what they say is important for us to hear and that we will learn from hearing it. Sometimes victims prove remarkably frank, blunt, or direct. *It is important to respect these exchanges and the victim who shares them.*

- ***The victim has the right to terminate his or her participation at any time***. Sometimes, a victim may just need more information or the choice of having the dialogue another time. If an offender is being destructive, the facilitator should stop the process unless the victim chooses to continue. Even then, the facilitator has a responsibility to consider the best course of action in the circumstances. (The figure "Levels of Victim-Offender Communication" shows types of contact from lowest intensity to highest intensity communication.)

- ***Victims' feelings can be experienced with acute intensity,*** and it can be difficult to know what to say or how to respond. *Recognize the power of silence; it can help participants accept what is being said and allow time to absorb its meaning.*

- ***Restoring victims has different dimensions, in addition to giving victims opportunities to be heard***. Restoration can include restoring safety, a sense of security, and the lack of fear, as well as recovering property or material losses. Regaining control, dignity, power, and a sense of fairness can also be restorative. *The critical element in restorative justice is that the victim determines which kind of restoration matters to him or her*: Some victims will prefer an apology from an offender rather than monetary compensation, for example. This preference must be respected, as it determines the sense of satisfaction and fairness experienced by victims who participate in restorative justice.

Levels of Victim-Offender Communication

SOURCE: Adapted from the Center for Restorative Justice and Mediation, University of Minnesota, in conjunction with the Minnesota Department of Corrections, the Balanced and Restorative Justice (BARJ) Project of the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Value of Victim-Offender Dialogue

In one victim-offender dialogue, between the father of a murdered daughter and the killer, the father talked openly about his love for his daughter and recounted huge chunks of her life. He said to the offender, "I am not doing this to hurt you. I just need you to know you took my baby . . . my little girl . . . my 'tomboy' . . . my teenager . . . a beautiful woman who was my daughter."[7]

- ***Symbolic reparation can be very important to a victim***—for example, an offender indicating a willingness to respect the victim's needs by offering new information about the crime. It is also important for restoration agreements to be honored, and subsequent monitoring plays an important role in restorative justice. *The community needs to be active in the response to the needs of the victims.*

- ***An assessment of the current level of victim support in your jurisdiction is prudent and supports restorative justice processes***. While the victim's informal social network can do much to provide support, sometimes a broader support system needs to be mobilized after the victim has had the opportunity to express his or her needs. *A balance must be struck between responsiveness by the community and oversight and provision of services by the state: victims might need a coordination of health services, emotional support, property repairs or recovery, assistance in security and in personal safety, financial support, and careful handling of their involvement in the justice intervention.* These needs require a partnership effort to ensure that community support and state services are coordinated and generated with consistency.

- ***Even when a crime is committed without the detection of the offenders, restorative justice can help by bringing victims together with community members and ex-offenders***. The police still have an important role here to show commitment to supporting and serving the interests of the victims. Victim panels may afford victims a chance to share their story with inmates, community groups, schools, or criminal justice professionals, which can help promote understanding about victims' trauma and their need for support. *Some crime victims have moved into advocacy work following such experiences, and many report that this has aided their recovery*. (See "Long-Term Benefits to Victims," in box.)

Victims have a tremendous stake in how restorative justice is implemented. Without their support, involvement, and input to learning, restorative justice is likely to be a fragile alternative to traditional criminal justice processes.

Long-Term Benefits to Victims

Face-to-face meetings between victims and offenders carry potential risks and rewards. *Restorative justice is much more than a crisis intervention.* Victim support services can help victims reach the point where they feel less overwhelmed by their emotions. Restorative justice takes things one step further by enabling victims to overcome the offender's action by understanding why he or she did it. This understanding helps to balance emotions with cognitive thinking—which is conducive to putting the crime behind them. The hurt may not go away, but it changes over time. Some victims will require ongoing support through this process.

Victim participation in justice processes, either under the traditional criminal justice system or under restorative justice, is a relatively recent phenomenon, and too little is known about what victims truly gain from their involvement (or offer to the processes). *Feedback from crime victims from both kinds of processes is essential to learn what is beneficial and helpful.* This requires victim surveys, interviews, and research over many years. Think about how your program can contribute to this.

Part 6 of this toolbox explores how to evaluate restorative justice in relation to the victims of crime. These evaluation measures will help determine the shape and focus of your program.

We need to move away from the situation Zehr describes in which the victim's needs are sidelined in the traditional criminal justice system: "We may invoke [victims'] names to do all sorts

of things to the offender, regardless of what the victims actually want. The reality is that we do almost nothing directly for the victim, in spite of the rhetoric. We do not seek to give them back some of what they have lost. We do not let them help to decide how the situation should be resolved. We do not help them to recover. We may not even let them know what has transpired since the offense."[8] It is important to elevate victims to a preeminent place in justice decision making.

The Role of Victim Advocates

The last 20 years have witnessed significant improvements in the awareness of victims' needs, due largely to those who have worked in the victim's movement. Their role has been critical in promoting rights of access to crime victims, securing better information for victims, encouraging justice professionals to be more victim sensitive, and generally increasing the involvement of victims in decisions during the criminal justice process. One potential clash lies between those who maintain the need for victims' *rights* and those who hold that addressing the victims' *needs* is the proper course of action. Some victim advocates might see restorative justice's emphasis on needs as compromising their efforts to secure a more favorable balance of rights for victims, compared with the current emphasis on protections for offenders in adversarial criminal justice processes.

For this reason, it is important to maintain a dialogue with victims' groups to understand the issues they seek to address and to work out satisfactory solutions to the tensions that may exist about restorative justice. This is particularly relevant in the case of domestic abuse and in other serious, violent crime cases.

Consistent with the ethos of restorative justice, however, one should not assume that victim representatives can always speak for crime victims. It is important for victims to be treated as individuals who have their own unique experiences and views.

Summary

Victims' needs include:

- *Participation in planning.* Be prepared to give victims an active role, but don't pressure them.
- *Sensitivity*. Be careful not to use words that carry condescending connotations for the victim. The facilitator should not allow violence or profanity.
- *Support.* Since expressing emotions is encouraged, the victim should have relatives or other trusted persons present.
- *Others' listening.* The victim needs the opportunity to speak with emotional intensity. Allowing for silence also gives these words time to sink in.
- *Role in agreed outcome*. The victim's participation helps determine what sort of restoration will be meaningful.
- *Conclusion.* The victim must be able to opt out at any time.

Part 3

Toolbox For Implementing Restorative Justice and Advancing Community Policing

Part 3. Holding Offenders to Account

Part 3. Holding Offenders to Account

> As a society we have been thinking that the only choice we have in responding to crime is to get meaner and meaner until we frighten people into behaving as we wish. But that is not the only choice we have for managing behavior, and fear is not the most powerful of measures.[9]

Introduction

Some say the criminal justice system is getting "meaner" because tougher sentencing is thought to be the only thing that works against crime. In the traditional view of crime fighting, offenders are different from law-abiding citizens, and public safety demands their segregation. This *us-versus-them* dichotomy is driving many crime control measures and is deep-seated in contemporary attitudes about crime:

> Woe betide him who dares, even so faintly, to blur this elemental distinction.[10]

Restorative justice seeks not to blur the distinction so much as to expose it as a real obstacle to understanding crime and what can be done about its causes and consequences. *Restorative justice does not preclude the need for punishment, including incarceration; but punishment is not the focus,* nor is it seen as the last line of defense. The focus, instead, is on holding the offender accountable for his or her behavior in ways that are meaningful to the offender—as well as to the victim and the community. Meaningful means:

- *Making a clear distinction between the behavior and the offender.* Restorative justice condemns crime and wrongdoing; but it seeks to explore the reasons why a person behaved this way—not to excuse or justify the crime, but to find an explanation. The offender is treated with respect and dignity.

- *Involving the offender in the problem identification process.* He or she may hold valuable clues as to what past or current experiences might have contributed to the offense; offending behavior does not happen in a vacuum.

- *Encouraging the offender to learn that his or her actions have consequences and to take active responsibility for repairing the harm.*

Humiliating an offender makes it almost impossible for him or her to accept responsibility. But hearing directly from those who have been wronged encourages the offender to understand the consequences of his or her actions and to acknowledge that others have been harmed. It does so by tapping into normal shame about the wrongdoing. Shame plays a crucial role in relationships and social bonds.

The criminal justice system encourages offenders to avoid responsibility and to deny their offense, in the hope that they might get off. In families, such behavior would be considered dysfunctional. It should also be seen as dysfunctional in communities.[11]

Role of Positive Shaming

Shame plays an important role in restorative justice; but it is important to distinguish between *stigmatizing* or *negative shame* and *reintegrative* or *positive shame*, which is more constructive. Positive shaming brings home to the offender the seriousness of the crime. Negative shaming humiliates and hardens an offender, thereby strengthening his or her defensiveness and rationalization of the behavior.

John Braithwaite's theory on reintegrative shaming developed from his observations of the socialization process in raising children and how regulatory processes for dealing with corporate crime can be effective. Neither laissez-faire parenting nor authoritarian methods are effective in child development, for example. Parents need to confront and disapprove of their children's misbehavior—but do so with reasoning. Similarly, in the corporate world, persuasion in lieu of enforcement has worked to promote adherence to safety and security negotiations.

In crime cases, the *offender's behavior must be disapproved within a continuum of respect for the offender* that includes helping him or her to understand the reasons why the behavior was wrong:

- ***One needs to exercise care when discussing shame*** because the word is laden with baggage suggesting that it means to *degrade*—rather than (as a verb) *to cause to feel regret or consciousness of guilt*. Shame is often hidden; but if victims share their story, the impact of the crime is likely to be accepted by the offender through understanding and empathy. *This acceptance helps the offender to think about taking responsibility to repair what harm has been done and to change his or her behavior*. (See "Keys to Positive Shame," in box.) Crime creates obligations that offenders are encouraged to meet.

Keys to Positive Shame

- Volition: Offenders have a choice whether to participate.
- Preparation: Make clear the possible consequences and that it will not be an adversarial setting.
- Atmosphere: Let the offender and victim speak and listen freely; authorities must not lecture or admonish the offender in a way that will put him or her on the defensive.
- Reparation: The agreed reparations must be meaningful, achievable, and tailored to the parties involved.
- Reconciliation: Reconciliation is marked by a symbolic ceremony where the offender acknowledges the harm he has done to the victim and has the opportunity to become part of the community again.

- ***Although an offender may make material reparation to a victim, as part of an agreement to carry out obligations, symbolic reparation may be more meaningful*** to both the victim and the offender. The offender's willingness to show empathy or remorse may be the main contribution to a victim's recovery. The emotion of shame experienced by the offender is often visible and made known (for example, by crying, showing discomfort or embarrassment, looking at the victim and saying, "I'm sorry"). Victims can regain trust. *The expression or sharing of emotion allows the victim to see the offender as a human being.*

- ***For the offender, the expression of shame connects him or her to the victim as well as to others***. Shame that is not shared tends to make a person feel isolated and inclined to repress the shame. Instead of hiding the shame, communicating shame enables the damage to the bond between the victim and offender to be repaired. *The offender can begin to move on by accepting responsibility for the crime and showing care for others.* The victim can also recover after learning the offender regrets his or her behavior.

- ***In dialogue involving friends and family, the shame might be experienced by people other than the offender*** (e.g., the offender's father, mother, sister). Sharing this shame can be done in positive ways that are respectful of the offender. Relentless finger-pointing or insulting the offender, however, is likely to provoke defensiveness and denial of shame in the offender. This interferes with the participants and the offender seeing one another as human beings.

Shame must be managed to avoid it becoming a humiliating experience that promotes hiding shame.[12]

Case Study
Humiliating Shame Can Be Counterproductive

In a case of school vandalism in which graffiti had been daubed on the walls with defamatory statements about the teachers, an offender who admitted to spray-painting one statement maintained he had no idea who else was involved. One of the teachers attending the conference, who seemed especially upset, launched into a verbal attack on the offender and accused him of being a coward. The conference did not lead to an agreement between the parties. The offender repressed his shame and, therefore, would not talk.

- ***Restorative justice promotes showing respect to all parties and seeing beyond the differences between the offender and others***. Restorative justice processes help people to understand that offenders, too, have mothers, fathers, children, siblings, friends, and neighbors: they too have feelings, strengths, and weaknesses. They too are human. *When we see shame in an offender we are able to recognize that they are like us; but we need to learn how to view shame positively*.

How Can This Be Accomplished?

- ***Only offenders who admit guilt and are willing to accept responsibility for the crime should participate***. Those denying their part in the crime should be dealt with by the formal justice system.

- ***Offenders should be given the choice of whether or not to participate in restorative justice processes***. Coercion can be counterproductive if the victim is confronted with someone who is neither cooperative nor willing to engage in the dialogue. Coercion can make the offender defensive and emotionally closed. Coercion can also be construed as meaning only that the offender has an obligation to meet the victim if the victim is wanting a dialogue. If offenders feel they have no choice, what they say or do in the meeting may not be genuine.

Traditional criminal justice asks "who did what?" Restorative justice asks "what really happened?"

- ***Good preparation can help to overcome an offender's reluctance to participate.*** Explaining the purpose of the dialogue, the process, who is likely to be there, and the possible outcomes can help an offender to see the benefits of participation. The offender might be encouraged to participate by learning that people who care about him or her can attend.

- ***Some kind of risk assessment is required before approaching an offender about participating*** in a restorative justice process. In the adversarial criminal justice process, these risks are seen to be related to the prior offending record and to the seriousness of the offense. *In restorative justice, the offender's attitude, capacity (e.g., level of verbal intelligence, psychological stability, honesty, and use/abuse of power), and willingness to cooperate in a dialogue are determinants*. Other determinants are the emotional risks for victims.

- ***You need to think about the influence other people have on the offender***. In the traditional criminal justice system there is a presumption of innocence. Many legal representatives advise their clients not to admit guilt. This adversarial process can encourage offenders and their lawyers to minimize what they have done. *In restorative justice, the presumption of innocence is not as important as simply telling the truth*. Offenders should be informed that the process they will go through is entirely different from that of the adversarial criminal justice system. Their right to silence is transformed into an expectation that they will cooperate within the process.

I Wanted To Admit Guilt

A man who had served 19 years for his part in a kidnapping said, "For the first five years I was in prison I continued to deny what I had done. I wanted to admit guilt at the trial but my attorneys wouldn't have it." In his view, the criminal justice system helped to insulate him from reality, and the appeals system put off his coming to grips with the wrong that he had done.

- ***Offenders may be confused by other aspects of the criminal justice system.*** Plea bargaining is common in the traditional system, but it erodes the meaningful holding to account of offenders. *Restorative justice affords an opportunity to offenders to meet the victim in a controlled setting without the artificial rules, customs, and processes prevalent in court* that can mitigate against offenders taking responsibility.

- ***Offenders should be advised that the process enables them to be seen in their life context as human beings***. The offender also has a choice about who he or she wishes to attend. Such choice supports the idea that restorative justice is about focusing on the harm committed by the offender—but in a way that shows concern for him or her.

- ***We need to create an atmosphere that encourages the offender to actively listen and to talk openly*** and honestly without fear. An offender may feel deeply embarrassed and ashamed; but if respect, care, and support are shown to the offender, he or she is likely to be able to participate in a constructive dialogue and learn from it. *The way the dialogue is conducted is likely to determine the extent to which it is experienced as restorative by the offender (and by the victim, too).*

- ***We need to give offenders the chance to explain themselves.*** They may be able to give reasons why they committed the crime. They might be able to respond to questions from the victims (and/or the community) and provide important answers that promote understanding about the crime and about their behavior and attitude. *This is an important part of problem solving following a crime.*

- ***We need to give offenders the opportunity to learn the consequences of their behavior in a cooperative atmosphere***. Many offenders do not think through the likely impact of a crime on others. Offenders might be very anxious about meeting those who can confront them with the harm that has been done; but *this opportunity is critical to promoting their readiness to take responsibility.*

- ***Care must be taken to avoid focusing only on the offender***. It is important for victims to have a key role in shaping the offenders' understanding of the harm that they have caused. If a crime is discussed only in factual terms—by someone who did not experience the harm—the offender is less likely to comprehend what he or she has done.

The meeting may be uncomfortable for offenders, but when they are encouraged to understand, accept, and carry out their obligations with the support of those they care about, then they feel less threatened.

Case Study
Victim's Expression of Harm Helps Offenders

In a Houston prison, victims met a group of inmates over a period of several weeks. The victims were motivated by wanting to help offenders change their behavior by getting them to understand what their crimes do to people. One inmate had killed the man who had raped his wife. He had rationalized his own behavior by believing he had been provoked. He did not understand why he should have been given a long sentence for something "any normal man would do." One of the victims talked about her pain after her son had been killed in different circumstances. The inmate said only after hearing her did he realize his killing had taken a son from someone else. He understood, for the first time, how wrong his actions were.

Stigmatizing or negative shaming is counter productive to the offender getting in touch with his own shame—a necessary precursor to victim empathy and taking responsibility for his actions.

You will find that a dialogue that brings an offender face-to-face with those who have been victimized is very powerful. The offender will not find it easy to ignore what is being said. This helps to get him or her to understand the obligations that arise following a crime. This is very different from the traditional justice process, which tends to insulate offenders from the damage they have done.

- ***Use a trained facilitator***. The dialogue should be facilitated by someone who has been trained and understands restorative justice. Care needs to be taken to *avoid the dialogue being overtaken by a lecture to the offender about his or her behavior or by someone putting the offender down*. Police officers, for example, can readily slip into an authoritarian mode, particularly if the offender does not appear to be fully participating. For this very reason, it is a moot point whether or not officers who facilitate such meetings should wear uniforms. An arresting officer present at such meetings may find it hard to refrain from showing moral superiority.

- ***If the dialogue becomes very intense—and it often does—allow room for silence***. This is particularly useful at the moment an offender expresses genuine shame and remorse. Giving time and space for these powerful expressions (and for people to receive them) is important. Emotions are encouraged, but they must also be channeled. Likewise excessive shaming of the offender can be balanced by a statement about the strengths of the offender (e.g., the offender has taken care of his or her sick mother or has volunteered to help the local charity).

  It is also *important for an offender to recognize what the crime has done to him or her*. The dialogue should allow the offender time to say how he or she has been affected. This may involve feelings of shame, fear, sense of isolation, denial, confusion, or attacking or blaming someone else. Getting offenders to be in touch with what is going on for them can be useful to identify behavior and attitudes that need attention as part of a commitment to taking responsibility for the crime. The figure "Differences Between Traditional Criminal Justice and Restorative Justice" compares the goals and processes of the two approaches to justice.

Case Study

Victim's Expression of Care Affects Offender

An offender wanted to meet the person he had raped after forcing his way into her home. During the course of the rape, the victim had asked the offender what had happened to him to cause him to do this. "It burned my heart that she showed care," he said. "I did not realize until then what I was doing and nor did I see, until much later, that I did it because I felt inadequate."

Case Study

How Connected an Offender Feels Can Influence Behavior

Michael was a persistent young offender who had been in trouble with police since he was 9 years old. At the age of 15, after stealing scores of motor vehicles, he was asked what would it take to stop him. He said he didn't know, but said the only people who ever talked to him were people who were paid to talk to him like the police, the social workers, and the judge. He hung around the streets to find company, and stealing cars just relieved his boredom. Michael did not feel connected with anyone, let alone his victims.

Offender Accountability

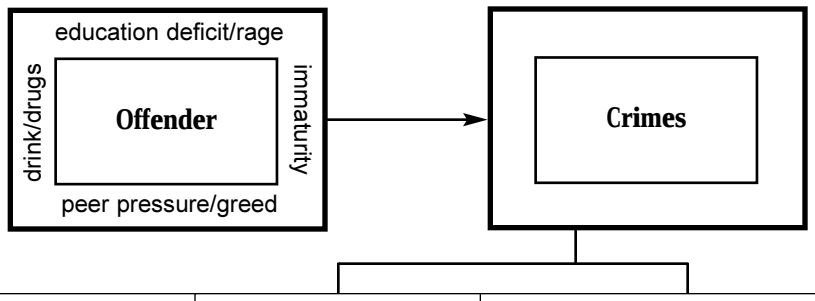
Accountability means:

- An offender getting over his or her justification, denial, or self-rationalization and acknowledging responsibility.
- Hearing the victims tell their story.
- Developing genuine empathy toward the victim.
- Taking active steps toward changing behavior to become a responsible, law-abiding citizen.

"The criminal justice system doesn't have a form of apology. It never requires people to apologize for their behavior. But that's the first and most important part of reparation."[13]

Restorative justice holds offenders to account in ways that reflect modern wisdom about cognitive thinking. Cognitive therapies focus on the way people think, how they deal with problems and choices, and the extent to which they anticipate the consequences of their actions. Cognitive restructuring attempts to change the content of beliefs, values, and attitudes with a view to improving a person's thought processes. *Similarly, restorative justice processes involve learning about the importance of social norms, of talking about these norms, of interpersonal connections that make for orderly behavior, and of actions that threaten public safety.*

Differences Between Traditional Criminal Justice and Restorative Justice



Factor Compared	Traditional Criminal Justice	Restorative Justice
Goal in exploring incident	Determine guilt or innocence	Discover causes, consequences, gain understanding of - harm done - offender's problem - repair needed - behavior change required - support needed
Role of victim, offender, community	No role for victim, offender, community	- Offender asked why - Victim tells offender and community about the harm - Community engaged
Outcomes and possible consequences	Punishment imposed: - compensation - fine - imprisonment Punish and deter (but offender may feel isolated, victimized, more resentful)	Agreed plan establishes reparations to diminish/repair harm for all: e.g., service (to victim and/or community), compensation, actions to support behavior change (e.g., drug/alcohol treatment, counseling, training), other Learning, improved relationships, offender accountability, harm repaired, offender integrated into community, crime prevented, community strengthened

Inadvertently, the traditional, adversarial system stops people involved in a crime from learning these important elements of civil society. It is not uncommon for everyone in court except the offender to feel angry or upset about what has happened.

Be aware that the focus of the dialogue is on identifying the harm and repairing it (see "Restorative Justice Promotes Repairing Harm," in box). Restorative justice rejects the concept of getting even with the offender (as in policies reflecting the *just desserts* theory). Instead, restorative justice calls for offenders to understand that their behavior has done harm, not by simply telling them that this is the case, but by *moral learning*. Hearing the victim tell how the crime has affected him or her is not necessarily, by itself, going to educate the offender as to what he should do to take responsibility. If, however, the victim speaks about how he or she wants the harm addressed or repaired, the offender will have a greater chance of learning how his actions have done wrong.

The sentencing process attempts to force the offender to understand, but it is more likely to make him or her feel like a victim.

Be aware of the point in the dialogue when the offender can be reconciled. A critical element of offender accountability is *when the offender accepts responsibility for making good the harm and taking steps to change his behavior—because he recognizes why this is important*. It is then that reintegration into the community can begin. The likelihood of further offending behavior is reduced if the offender is supported by the community in fulfilling the obligations agreed at the meeting.

Where restorative justice has been evaluated, drops in recidivism and high levels of offenders fulfilling the terms of agreements are recorded. This is quite different from the experience with traditional criminal justice processes. Moral education requires explaining, not imposition of punishment in the hope that the offender will understand.

There is even a place in restorative justice processes for violent offenders, when victims are ready for a face-to-face dialogue. (See "Restorative Justice and Violent Offenders," in the box.)

Some harms cannot be repaired. The important thing is that the offender responds to the obligations identified through the process. In some cases, not offending again may be the most meaningful accountability to the victim and the community.

The reparation should be relevant to the victim and achievable by the offender. It should be reasonable, fair, and tailored to the parties. Such reparation is much more than a mere alternative to a punitive sanction by the court.

Restorative Justice Promotes Repairing Harm

The word reparation is often used interchangeably with restitution and compensation. Reparation can take many forms:

- Expressing full responsibility and making an apology
- Monetary payment to victims for property loss/damage
- Giving victims answers to questions they want answered about the crime (often the most important in cases of homicide survivors)
- Working directly for the victim or the community or undertaking work that is important to them
- Taking steps to obtain help to change behavior (e.g., drug treatment, counseling, education, finding work)
- Speaking to other offenders about what they learned through the restorative justice processes to prevent further victimization

Restorative Justice and Violent Offenders

Some might find it incomprehensible how violent offenders can be dealt with by way of restorative justice. However, James Gilligan, who has worked with violent offenders for more than 25 years, comments, "Human violence is complex and tragic; if we only see it as a criminal justice issue, we limit the discourse—distinguishing only between violent and nonviolent people and the sane and the insane."[14] Restorative justice allows a discourse that goes beyond the legal definition of violence and violent victimization. The reintegrative shame theory is relevant to violent crime; many violent offenders harbor deep shame, which they seek to repress and conceal. *Being sensitive to this is not condoning violence—it might help to break the vicious cycle of pathological shame.*

At the end of a restorative justice process, after a plan has been agreed to on how the offender should repair the harm, it is good practice to have a ceremony to allow people to release the tension experienced during the dialogue. In some cases, the *ceremony* occurs when reintegration of the offender, forgiveness of offenders, and apologies to the victim take place. What happens in this time out can be the most powerful symbolic reconciliation between the parties. The ceremony can take the form of a meal or a drink. In some processes, symbols are used (for example, a feather) to represent peace and are handed around the room.

Case Study

Restorative Justice Enables Offenders to Come to Terms With Their Crimes

Many offenders don't give their crime much thought. One drug dealer who believed he had merely been successful at running a business told of his realization that he had victims too. He heard a woman talk about the loss of her daughter in a road traffic accident involving a drunk driver. The drug dealer serving time said, "for the first time, I learned I had caused people to die (driving under the influence), to steal (to pay for the drugs), to live in poverty (to sustain the habit). Until that moment he had believed his crime was victimless.

The end of a dialogue should be seen as a beginning, not as an end. The balanced approach of restorative justice seeks to build an offender's competence to become a law-abiding citizen and to realize his or her potential to make a contribution to society.